



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/550,936

09/28/2005

Frans Johan Sarneel

19790-003US1

4644

26191 7590 11/19/2009
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

WATTS, JENNA A

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

11/19/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Advisory Action

Request for Consideration – Continuation of 11.

1. The request for reconsideration does NOT place the application in condition for allowance because: the arguments presented do not overcome the prior art rejections previously set forth in the non-final and final rejections mailed.
2. Regarding Applicant's argument that the dry mix is multipurpose and can be used as a filling or spread, etc. such language is intended use language, and as long as the components of the mix are fulfilled, the claim limitations are met. Furthermore, regarding the specific meaning of "multipurpose" as claimed, the specification provides no definition of the term multipurpose, therefore, for the purposes of examination and patentability determination, the conventional meaning of the term multipurpose was taken, and since Fazzina teaches a dry mix that can be applied to a variety of foodstuffs, the dry mix of Fazzina was deemed a multipurpose mix.
3. Regarding Applicant's argument that the ranges taught by the prior art are different than what is claimed, the ranges taught in the prior art for the claimed components of the dry mix overlap with Applicant's claimed ranges and it has been found that, [where] "the difference between the claimed invention and the prior art is some range or other variable within the claims...Applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range." *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir.1990). MPEP 2144.05 III. Therefore, absent any showing of criticality of the

Art Unit: 1794

claimed ranges, the claimed ranges are deemed obvious over the ranges of the applied prior art.

4. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, clear motivation was provided for the use of various components into the dry mix of Fazzina, for example, starch n-octenyl succinate and vital wheat gluten, therefore, the motivation and benefit to use the above components, for example, was known in the art at the time that the invention was made, and therefore, their use in the dry mix of Fazzina would have been obvious to one of ordinary skill in the art.

5. Therefore, the rejections previously set forth in the final rejection still stand and do not establish patentability based on the above discussion.

/JENNA A. WATTS/
Examiner, Art Unit 1794
November 12, 2009